

SENATE BILL NO. 46

INTRODUCED BY A. BISHOP

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A NOTICE OF LEVY WHEN ISSUED HAS THE SAME FORCE AND EFFECT AS A WRIT OF EXECUTION ~~AND IS CONTINUOUS UNTIL FULLY SATISFIED;~~ PROVIDING THAT A LEVY UPON EARNINGS CONTINUES IN EFFECT FOR 120 DAYS; AMENDING SECTIONS 15-1-706 AND 39-51-1304, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-706, MCA, is amended to read:

"15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

~~(3) When issued, a notice of levy has the same force and effect as a writ of execution and is continuous until satisfied, but not longer than 10 years.~~ A LEVY UPON EARNINGS CONTINUES IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT IS SATISFIED, WHICHEVER OCCURS FIRST. THE LEVY APPLIES TO ALL PAY PERIODS BEGINNING DURING THE 120-DAY PERIOD.

~~(3)(4)~~ A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

~~(4)(5)~~ If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment."

Section 2. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid taxes -- levy and execution. (1) Unpaid taxes, including

1 penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer or
2 against the liable corporate officer or liable member or manager of a limited liability company referred to
3 in 39-51-1105; or a partner in a limited liability partnership, arising at the time that the payments are due.
4 The department may issue a certificate stating the amount of payments due and directing the clerk of the
5 district court of any county of the state to enter the certificate as a judgment in the docket pursuant to
6 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal
7 property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been
8 satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the
9 tax in the same manner as prescribed for execution upon a judgment. When issued, a notice of levy has
10 the same force and effect as a writ of execution and is continuous until satisfied, but not longer than 10
11 years. A LEVY UPON EARNINGS CONTINUES IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT IS SATISFIED, WHICHEVER
12 OCCURS FIRST. THE LEVY APPLIES TO ALL PAY PERIODS BEGINNING DURING THE 120-DAY PERIOD. A notice of levy may
13 be made by means of a certified letter by an agent authorized to collect the tax. The department may
14 enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the
15 lien, whichever is later.

16 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period
17 pursuant to the methods provided in 25-13-102.

18 (3) The lien provided for in subsection (1) is not valid against any third party owning an interest
19 in real or personal property against which the judgment is enforced if:

20 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

21 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
22 that all taxes, penalties, and interest due from the grantor have been paid.

23 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by
24 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may
25 proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest
26 from the:

27 (a) employer;

28 (b) liable corporate officer;

29 (c) liable member or manager of a limited liability company referred to in 39-51-1105; or

30 (d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 254 IS NOT PASSED AND APPROVED, THEN THIS BILL IS VOID.

NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2001.

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